

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ELIAS GARCIA on behalf of himself, and)	
all others similarly situated,)	
)	
Plaintiff,)	Civil Action No. 18-cv-3669
)	
vs.)	Judge Kendall
)	
TAX PROS LTD. d/b/a JACKSON)	
HEWITT TAX SERVICE,)	
)	
Defendant.)	

**PLAINTIFF’S MOTION TO ENTER CONSENT JUDGMENT
AND FOR AN AWARD OF ATTORNEYS’ FEES AND COSTS**

Plaintiff Elias Garcia, through his counsel, moves for an Order (i) entering a Consent Judgment consistent with the terms of the parties’ settlement agreement, (ii) directing the Clerk to make entry of judgment pursuant to Fed. R. Civ. P. 79, (iii) approving Plaintiff’s request for an award of reasonable attorneys’ fees, and (iv) granting such further relief as it deems just and proper. In support of this motion, Plaintiff states as follows:

1. This lawsuit arises under the Fair Labor Standards Act, 29 U.S.C. §201, *et. seq.* (“FLSA”), for Defendant’s failure to pay Plaintiff and other similarly situated employees earned overtime wages. Plaintiff also brings an individual claim under the Illinois Minimum Wage Law, 820 ILCS § 105/1 *et seq.* (“IMWL”) for Defendant’s failure to pay him overtime wages.

2. On or about July 24, 2018, Plaintiff executed a copy of the parties’ settlement agreement.

With respect to payment of the settlement proceeds, the agreement provided that:

- (i) Within seven (7) days of the Employee executing the agreement, Employer shall pay a total of Three Thousand Dollars and Zero Cents (\$3,000.00), which shall be apportioned as follows:

Payment to Elias Garcia: A lump-sum check made payable to Elias Garcia in the gross amount of Two Thousand Five Hundred Fifty-Six Dollars and Seventy-Five Cents (\$2,556.75). An IRS form 1099 will be issued to Elias Garcia by Employer.

Payment to Werman Salas P.C.: A lump-sum check payable to Werman Salas P.C. in the gross amount of Four Hundred Forty-Three Dollars and Twenty-Five Cents (\$443.25). The amount paid to Werman Salas P.C., (EIN #20-3042887), is for Employee's attorneys' costs. An IRS form 1099 will be issued to Werman Salas P.C. by Employer for the attorneys' fees paid under this Agreement.

- (ii) On or about November 30, 2018, Employer shall pay a total of Five Thousand Dollars and Zero Cents (\$5,000.00), which shall be apportioned as follows:

Payment to Werman Salas P.C.: A lump-sum check payable to Werman Salas P.C. in the gross amount of Five Thousand Dollars and Zero Cents (\$5,000.00). The amount paid to Werman Salas P.C., (EIN #20-3042887), is for Employee's attorneys' fees. An IRS form 1099 will be issued to Werman Salas P.C. by Employer for the attorneys' fees paid under this Agreement.

A copy of the settlement agreement is attached hereto as Exhibit A.

3. Pursuant to the terms of the settlement, the second installment of the settlement proceeds was due on November 30, 2018. Defendant failed to make this payment under the terms of the Agreement.

4. On December 3, 2018, Plaintiff's counsel contacted Defendant's counsel and provided Defendant notice of its breach of the Agreement. Despite that notice of default, and numerous communications with Defense counsel, as of today's date, Defendant has failed to cure its breach.

5. Defendant agreed that in the event that it defaulted on its obligation to make the payments as required by the Settlement Agreement, any unpaid settlement proceeds, plus attorney's fees incurred in enforcing the agreement, would be immediately reduced to a consent judgment in favor of Plaintiff and against Defendant. See Paragraph 7 of Exhibit A. A proposed consent judgment is attached hereto as Exhibit B.

6. The Settlement also provides for an award of attorneys' fees in the event of a breach. Exhibit A, paragraph 7.

7. Plaintiff requests an award of reasonable attorneys' fees in the amount of \$1,050.00 for 1.5 hours of time spent on appearing in court on January 3, 2019, drafting this motion, and appearing in court on this motion. Plaintiff's counsel's last hourly award for attorneys' fees is \$700.00 per hour. On October 9, 2018, Magistrate Judge Valdez awarded me the hourly rate of \$700.00 per hour in the case of *Bainter v. Akram Investments, Inc., et al.*, Case No. 17 C 7064. ECF No. 106. I have been awarded \$650/hr by courts for work I primarily performed before the 2018 calendar year. For example, in granting a petition for an award of attorney's fees, I was awarded the hourly rate of \$650.00 per hour in *Sanchez v. Roka Akor Chicago, LLC*, No. 14 C 4645, 2017 WL 1425837, at *6 (N.D. Ill. April 20, 2017) (J. Kendall). See also *Osman v. Grube, Inc.*, No. 16-cv-00802, 2018 WL 2095172, at *4 (N.D. Ohio May 4, 2018); *Soto v. Wings 'R Us Romeoville, Inc.*, No. 15 C 10127, 2018 WL 1875296, at *5 (N.D. Ill. April 16, 2018) (J. Dow); *Knox v. Jones Grp.*, Case No. 15-cv-1738-SEB-TAB, 2017 WL 3834929, at *4 (S.D. Ind. Aug. 31, 2017).

WHEREFORE, Plaintiff requests that the Court (i) entering a Consent Judgment consistent with the terms of the parties' settlement agreement, (ii) directing the Clerk to make entry of judgment pursuant to Fed. R. Civ. P. 79, (iii) approving Plaintiff's request for an award of reasonable attorneys' fees, and (iv) granting such further relief as it deems just and proper.

Respectfully submitted,

s/Douglas M. Werman
One of the Attorneys for Plaintiff

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